



AUG 23 2000

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Henricks, Slavin & Holmes LLP
840 Apollo Street, Suite 200
El Segundo, CA 90245-4737

In re Application of MURDOCH et al
U.S. Application No.: 09/582,341
Int. Application No.: PCT/AU98/01077
Int. Filing Date: 24 December 1998
Priority Date: 24 December 1997
Attorney Docket No.: 010100-101
For: A TRANSMITTER AND A METHOD FOR
TRANSMITTING DATA

DECISION

This is in response to applicants' "Petition to Correct Official Filing Receipt" filed 02 October 2000, which is being treated as a petition under 37 CFR 1.182.

BACKGROUND

On 24 December 1998, applicants filed international application PCT/AU98/01077, which claimed priority of an earlier Australia application filed 24 December 1997. A copy of the international application was communicated to the USPTO from the International Bureau on 08 July 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 20 July 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 26 June 2000 (24 June 2000 was a Saturday).

On 23 June 2000, applicants filed national stage papers in the United States. The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 19 July 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 22 August 2000, applicants filed a declaration in compliance with 37 CFR 1.497.

On 02 October 2000, applicants filed the present petition, requesting that the 35 U.S.C. 371 filing date be changed from 22 August 2000 to 16 August 2000.

DISCUSSION

For a United States national stage application filed under 35 U.S.C. 371, the filing date listed on the filing receipt is the date the requirements of 35 U.S.C. 371 are satisfied. See MPEP 1893.03(b). In the present case, the 35 U.S.C. 371 requirements were completed on 22 August 2000, i.e. the date on which the declaration was received. The 22 August 2000 receipt date for the declaration is confirmed by the copy of the return postcard filed with the petition. The return postcard lists a "Declaration / Oath" in its itemized contents and bears a USPTO date stamp of 22 August 2000. The petition asserts that the declaration was accompanied by a certificate of mailing dated 16 August 2000. However, 37 CFR 1.8(a) states in relevant part,

Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes. (Emphasis added.)

In the present case, the 16 August 2000 certificate of mailing may be used to establish a timely response to the Notification of Missing Requirements mailed 19 July 2000. However, in accordance with 37 CFR 1.8(a), the actual date of receipt is used for determining when the requirements of 35 U.S.C. 371 are satisfied. Thus, 16 August 2000 is not the proper filing date to be listed on the filing receipt.

CONCLUSION

For the reasons above, the petition is DISMISSED without prejudice.

If reconsideration on the merits of this decision is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision.

The requisite petition fee set forth in 37 CFR 1.17(h) will be charged to Deposit Account No. 50-0655 per applicants' authorization.

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.


Bryan Tung

PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459